

**From:** Lynn Kunzler  
**To:** Paul Baker  
**Date:** 6/19/2008 8:26 AM  
**Subject:** Fwd: Pleasant View City v. Butters/Towers Sand & Gravel  
**Attachments:** Petition for Declaratory & Other Relief.pdf; Mem in Supp of Mot for Judgment on the Pldgs.pdf

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Incoming

Paul - don't know if you were aware of this, (you were not on the cc list). But, since this one is now yours (being in Weber County), I am passing it on to you as FYI.  
Also, earlier this week, Kevin Butters submitted a LMO for the operation (about time!).

>>> "Jody K Burnett" <[jburnett@wilhunt.com](mailto:jburnett@wilhunt.com)> 05/07/2008 3:39 PM >>>

Steve,

Following up on my recent telephone conversations with you and Lynn Kunzler, I am forwarding copies of the declaratory judgment action we filed on behalf of Pleasant View City with the City's most recently amended excavation ordinance attached as an exhibit together with the memorandum we recently filed in support of a motion for judgment on the pleadings.

This is a long standing dispute and involves a number of issues, but my view has been and continues to be that we need to get a decision on the critical threshold issue of whether and to what extent the City has the authority to regulate this gravel operation as a prior nonconforming use. I realize that specific question doesn't directly relate to the role of DOGM, but Joe Chambers as the attorney for the owners and operators of this gravel pit has consistently asserted that the City is preempted from such local regulation citing the Utah Mined Land Reclamation Act, Utah Code Ann. Section 40-8-1, et. seq.

It is certainly not our intention to drag you into this dispute, but the City would like to be responsive to the legislative objective identified in section 40-8-5(2) to coordinate our efforts with DOGM and avoid unnecessarily duplicating, overlapping or conflicting provisions or procedures.

In that spirit of cooperation, we would appreciate your review and comment on the City's ordinance and whether we can utilize your rules and procedures as a means of complying with the City's objectives.

You should be aware that this case has been consolidated with an earlier pending action brought by Butters against the City and a more recently filed Petition to disconnect this property from the City. Suffice it to say that this is a complicated situation. However, our goal is compliance and if we are successful in getting a decision from the court that Butters operation is subject to our ordinance as a nonconforming use, then coordination with DOGM will be important in resolving any "as applied" challenges to the application of the ordinance.

We appreciate your cooperation and assistance and look forward to receiving the benefit of any comments and suggestions you may have. Please let me know if I can provide you with any additional information in support of that effort.

Best regards,

Jody Burnett  
(801) 521-5678

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Rec'd  
6/24/08

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IN THE SECOND JUDICIAL DISTRICT COURT FOR WEBER COUNTY  
STATE OF UTAH

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PLEASANT VIEW CITY, a municipal  
corporation,

Plaintiff,

v.

C. E. BUTTERS REALTY &  
CONSTRUCTION, INC.; TOWERS  
INVESTMENTS, LLC; TOWERS SAND &  
GRAVEL, LLC; KENT BUTTERS; AND  
CRAIG BUTTERS,

Defendants.

PETITION FOR DECLARATORY  
AND OTHER RELIEF

Civil No. 070906020

Judge W. Brent West

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Petitioner Pleasant View City (the "City") brings this action for declaratory and injunctive relief and complains of Defendants alleging as follows:

**PARTIES, JURISDICTION AND VENUE**

1. The City is a municipality and political subdivision of the State of Utah.
2. Defendants C. E. Butters Realty & Construction, Inc.; Towers Investments, LLC; Towers Sand & Gravel, LLC; Kent Butters; and Craig Butters (collectively "Butters") are the owners or operators of a sand and gravel excavation and processing

operation (the "Gravel Pit") as more fully described herein. The Gravel Pit is located at approximately 1476 West 4300 North, Pleasant View, Utah.

3. In December 2005, and pursuant to Utah Code Ann. § 10-9a-101 et seq., the City adopted an amended excavation ordinance (the "Ordinance") regulating the use of land within the City. Pursuant to Utah Code Ann. § 10-9a-802, the City is authorized to enforce the Ordinance and its provisions.

4. The City seeks a declaratory judgment pursuant to Utah Code Ann. § 78-33-1 et seq. determining the validity and construction of the Ordinance with respect to the right of the City to regulate the Gravel Pit pursuant thereto, and further seeks injunctive relief pursuant to Utah Code Ann. § 10-9a-802, either mandating compliance with the Ordinance or, in the alternative, to prevent, enjoin, abate, or remove further operation of the Gravel Pit without complying with the Ordinance.

#### **GENERAL ALLEGATIONS**

5. Over the course of several decades since at least 1967, the City, concerned citizens and the prior owners and operators of the Gravel Pit have addressed various issues arising between them regarding the use and operation of the Gravel Pit. Those issues have included, by way of illustration, compliance with past excavation ordinances and business licensing requirements, blasting activities, nonconforming uses and expansion of uses, access by trucks and heavy machinery to and from the Gravel Pit, among other issues.

6. For example, in February 1999 a group of citizens filed a petition with the City's Board of Adjustment alleging that the Gravel Pit had not been continuously operated so as to be a prior nonconforming use pursuant to the City zoning ordinances,

and that the Gravel Pit did not comply with the then-existing excavation ordinance. After hearings before the Board of Adjustments, the Board determined that the Gravel Pit was a prior nonconforming use. The Board of Adjustments did not address any other issues concerning compliance with other ordinances.

7. The citizens group thereafter brought a Complaint and Petition for Review in this Court alleging that the City's decision was not supported by substantial evidence, Wagoner, et al. v. Pleasant View City, Case No. 990906946. The City answered the Complaint, denying the allegations. The citizens group has not pursued the litigation, and that matter was dismissed for failure to prosecute in March 2005.

8. During this same period in October 1999, the City enacted Ordinance 99-21, which ordinance limited the hours trucks from the Gravel Pit could use the City's 500 West Street. Butters brought suit against the City challenging both Ordinance 99-21 and also the City's then-existing excavation ordinance more broadly, Butters, et al. v. Pleasant View City, Case No. 990907167.

9. Later in 1999, Judge Glassman entered a Preliminary Injunction which prohibited the City from enforcing the provisions of Ordinance 99-21, which was limited in scope to addressing the hours Gravel Pit trucks could use 500 West Street. There has been no further activity in that case since that time.

10. Over the next several years the City and Butters have addressed access issues concerning 500 West and the routes trucks traveling to and from the Gravel Pit could or should use within the City to deal with traffic safety concerns. In early 2001 the City entered into negotiations with the owner of a neighboring property, which also contains a

gravel pit and is located outside the current City boundaries in the unincorporated area of both Box Elder and Weber Counties, for the purpose of negotiating an agreement which would also resolve certain access issues regarding the Butters' Gravel Pit.

11. Pursuant to those negotiations, the City approved a series of licensing agreements providing a temporary alternative western access to and from the Gravel Pit. In connection with these negotiations and agreements, the City issued a Temporary Excavation Permit to Butters to allow the City to evaluate the Gravel Pit's operations and determine whether it could issue a long-term excavation permit based upon Butter's willingness to operate under the then-existing excavation ordinance.

12. During this same period, the City initiated certain general plan, zoning text and map amendments in order to accommodate a proposed annexation and development project from the owner of the neighboring gravel pit. In connection with these actions, and both because of concerns expressed by that owner with excavation ordinances in neighboring jurisdictions under which it was operating and concerns with the City's ordinance previously expressed by Butters, the City began considering and processing extensive amendments to the then-existing excavation ordinance.

13. During 2005 City staff carefully evaluated the former ordinance and contacted gravel operators with general experience in other jurisdictions for input. After due consideration, and based upon input from these and other sources, the City extensively amended its former excavation ordinance and enacted the Ordinance No. 2005-16, the ordinance subject to this action, in December 2005. A copy of the Ordinance is attached hereto as Exhibit A and incorporated herein.

14. Butters did not actively oppose the Ordinance during its consideration by the City nor did Butters file any appeal or petition for review of the City's decision in enacting the Ordinance.

15. Thereafter, the City provided a copy of the Ordinance to Butters and notified Butters of its obligations to comply with the Ordinance. The City specifically notified Butters that the Ordinance applied to all existing excavation operations, including the Gravel Pit, as a lawful prior nonconforming use.

16. To date, Butters have failed to comply with the Ordinance or bring the Gravel Pit into compliance with the Ordinance's requirements, terms and conditions.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment)**

17. The City incorporates by reference the allegations in ¶¶ 1 through 16, above.

18. Without attempting to catalogue or limit Butters' claims, over the course of a number of years in the City's dealings with Butters and in its attempts to regulate Butters' operations, Butters has taken the position, inter alia, that because the Gravel Pit is a prior nonconforming use, the City has no power or authority to impose regulations like those contained in the Ordinance, and that the City's excavation ordinance, on its face, constitutes a taking of Butters' property.

19. The City denies Butters' characterizations of the Ordinance and applicable legal authority and asserts that the Ordinance is a facially valid land use ordinance, which Butters has failed to challenge in a timely manner. Pursuant to Utah Code Ann. § 78-33-1, et seq. the City is entitled to this Court's declaration and order that the

Ordinance is a facially valid exercise of the City's police powers pursuant to Utah Code Ann. § 10-9a-801 et seq. and is therefore enforceable against Butters and other gravel excavation operations within the City.

**SECOND CLAIM FOR RELIEF**  
**(Enforcement Action)**

20. The City incorporates by reference the allegations in ¶¶ 1 through 18, above.

21. By operating and maintaining the Gravel Pit in the period since December 2005, Butters is in violation of the Ordinance in a number of respects including, inter alia, as follows:

- a. Butters has failed to apply for or have issued an "excavation permit" as required by and pursuant to the process contemplated by the Ordinance §§ 8.24.030, 8.24.40;
- b. Butters has failed to comply with the operational requirements imposed by the Ordinance § 8.24.080;
- c. Butters has failed to comply with the rehabilitation requirements imposed by the Ordinance § 8.24.090; and
- d. Butters has failed to comply with the surety requirements imposed by the Ordinance § 8.24.100.

22. Pursuant to the Ordinance and provisions of Utah Code Ann. § 10-9a-802, the City is entitled to this Court's declaration and order finding Butters in violation of the Ordinance and its Order either mandating compliance with the Ordinance or preventing,


enjoining and abating further operation of the Gravel Pit without complying with the Ordinance.

WHEREFORE, the City prays for judgment as follows:

1. For a judgment in favor of the City finding and declaring that the Ordinance is a valid exercise of the City's police powers pursuant to Utah Code Ann. § 10-9a-801 et seq. and is enforceable against Butters and other gravel excavation operations within the City;
2. For a judgment in favor of the City finding Butters in violation of the Ordinance and either mandating compliance with the provisions of the Ordinance or preventing, enjoining and abating further operation of the Gravel Pit without complying with the Ordinance; and
3. For the costs incurred in pursuing this Complaint and such other and further relief as the Court deems just and equitable.

DATED this 2nd day of October, 2007.

WILLIAMS & HUNT

By   
Jody K. Burnett  
Robert C. Keller  
Attorneys for Defendant  
Pleasant View City

Plaintiff's address:  
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**EXHIBIT A**

## **ORDINANCE 2005-16**

**An ordinance amending the text of the Excavation Ordinance, Chapter 8.24 regarding hours of operation, annual reporting requirements, renewal of excavation permits, contents of operation plan, rehabilitation plan, backfilling standards and to consider providing for temporary asphalt and cement plants.**

**Section One:** Be it resolved by the Pleasant vie City Council to amend Chapter 8.24 – Excavation Ordinance as follows:

### **Chapter 8.24 – Excavation**

**8.24.010 Purpose.** It is the purpose and object of this ordinance to establish reasonable and uniform limitations, safeguards, and controls on excavation within the city. These provisions are deemed necessary in the public interest to affect practices which will provide protection of the tax base, provide for the economical use of vital materials necessary for our economy and give due consideration to the present and future use of land in the interest of promoting the public health, comfort, safety, community character and general welfare. It is the primary intent of this ordinance that excavated land be rehabilitated as soon as possible to prevent conditions detrimental to neighboring property and residents, and to provide for the subsequent beautification and beneficial use of the lands affected by excavation. (Ord. 98-9, dated 10/27/98: prior codes Ord. dated 1/9/75 (part) and § 19-1-1).

#### **8.24.020 Definitions.**

A. **Excavation.** For the purposes of this ordinance, excavation shall mean the removal of rock, sand, gravel, clay and any other soil by digging, leveling, scraping, blasting, screening, processing, and operating, maintaining and repairing equipment, marketing, advertising and selling aggregate products and services to the general public, or any other process, together with all other types of mining operations where material is removed from the earth. The recycling of concrete products may be allowed as a conditional use which must be approved by the City Council following the normal process as provided by City ordinance and based on the criteria for extended operations set forth in Section 8.24.110 of this ordinance. The provisions of this ordinance shall not apply to the removal of sod, provided such removal is no closer than ten feet to any property line or to a depth in excess of three inches, and will not adversely affect the drainage, stability, and/or vegetation of the area. This ordinance shall not apply to ditching and land leveling for agricultural or public recreational uses (parks), or for site preparations for building a structure. Site preparation and grading for other purposes which exceeds ten cubic yards per acre, or a proportionally equivalent amount for fractional acreage, shall be considered a conditional use which must

be approved as a separate permit by the City Council following the normal process as provided by City ordinance.

B. Excavation Permit. For the purpose of this ordinance the acceptance of the excavation and rehabilitation plan by the City Council, together with such additional conditions or limitations as may be imposed, and evidenced by the properly endorsed and designated signature blocks, shall constitute the issuance of an excavation permit.

C. Land. Land means the surface and subsurface of an area within the incorporated areas of the city where excavation operations are being or will be conducted, including but not limited to: on-site private ways, roads, the excavation site itself, exploration sites, drill sites or working, parking, storage areas; areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in such operation, are situated.

D. Off-site. Off-site means the land areas that are outside or beyond the on-site land which is owned or controlled by the owner or operator.

E. On-site. On-site means the land within which mining operations are or will be conducted, which is bounded by continuous property lines dividing the surface or land ownership, control, or right that is invested in the operator. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the City Council.

F. Operator. Operator means any person, firm, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind either public or private, owning, controlling, or managing excavation operations or proposed excavation operations.

G. Owner. Owner means any person, corporation, association, partnership, or other legally deeded organization or representative of any kind, either public or private, owning, controlling or managing a mineral deposit or the lands employed in excavation operations.

H. Public Road. Public road means any road, street, alley, lane, court, place, viaduct, tunnel, culvert, or bridge laid out or erected as such by the public, or dedicated or abandoned to the public, or made such in an action for the partition of real property, and includes the entire areas within the right-of-way.

I. Rehabilitation. Rehabilitation means actions performed during and after excavation operations to shape, stabilize, re-vegetate, or otherwise treat the land affected in order to achieve a safe, stable, ecological condition. The excavated lands will be rehabilitated to a usable condition which is readily

adaptable to alternate land uses and creates no danger to public safety. These rehabilitated or reclaimed land areas will be consistent with the city land use plan in the immediate areas. The rehabilitation process may extend to affected lands surrounding the excavated lands and may require backfilling, grading, re-soiling, re-vegetation, soil compaction, stabilization, and other measures. (Ord. 98-10, dated 11/10/98 and Ord. 98-9, dated 10/27/98; prior codes Ord. 95-14, 11/14/95, Ord. dated 1/9/75 (part) and § 19-2-1))

**8.24.030 Excavation Permit Required.** No excavation shall be permitted on any land in the city unless authorized under an "excavation permit" issued to the owner and operator of the property in accordance with the application procedures provided by this chapter. (Ord 98-9, dated 10/27/98)

**8.24.040 Application Contents and Review Procedures.** In order to ensure that the area of the proposed excavation is reasonable for that purpose and to ensure rehabilitation of the land to a state that enables meaningful use and respects aesthetic values, the owner or operator shall, prior to the commencement of any phase of operation, submit to the city an excavation and rehabilitation plan which addresses the following:

A. General Information. The following shall be provided: the name of the property, property owner(s), lessee, operator(s), agent of process, location of property, and legal description.

B. Pre-excavation Site Inventory and Analysis. A pre-excavation inventory and analysis both off-site and on-site shall be performed by the applicant containing the following information:

1. A regional vicinity analysis describing other land uses surrounding the site, the possible impacts of the proposed excavation on surrounding land and the methods to be employed to mitigate any potentially negative effects; and

2. A description of the regional haulage routes to be employed on public and private roads.

3. A topographic map of the area (at a scale of one inch equals one hundred (100) feet) with a maximum contour interval of five feet, and extending at least 500 feet beyond the proposed excavation site;

4. A description of the visual characteristics, with particular concern given to the potential use of existing natural topography and vegetation, to shield site operations from nearby properties, roadways, and the general public;

5. A soils survey, to include a soils profile; and

6. An aerial photograph with contours of the proposed excavation site.

C. Excavation Operations Plan. The application shall provide an excavation operations plan which describes the following:

1. Proposed starting date and the anticipated period of operation;
2. Planned phases of excavation;
3. Anticipated amount of material to be removed at each phase;
4. Number, type and kinds of machinery and equipment to be used;
5. Operational processes, including crushing, stockpiling, milling, etc.;
6. The water to be used in operations, its source, control and disposal;
7. Electrical power requirements, source and control;
8. Accessory facilities, such as scales and buildings;
9. Sanitary facilities and disposal system;
10. Wind and air movement patterns with a description of techniques used to control dust and noise;
11. Transportation routes on and off site;
12. Run-off water control and detention;
13. Depiction of phases and location of all facilities, stockpiles, transportation routes, detention basin(s), and water and power sources on topographic map above or other suitable map;
14. Any economic or adverse effects on the surrounding area and steps taken to mitigate their impact, such as dust and vibration control and noise abatement; and;
15. Detailed analysis and description of noise levels (expressed in decibel) expected from proposed operations.
16. Cross sections showing existing surfaces and proposed future surfaces at 250 foot intervals across the site. Sections should be drawn parallel to slope. Final cut and fill slopes shall not exceed a steepness of 2.0 feet horizontal to 1.0 foot vertical drop from the top to the bottom of the pit.
17. To the extent not already shown, how the operations will comply with the operational requirements of 8.24.080.

D. Rehabilitation Plan. As part of the final application and approval of an excavation permit and before beginning any excavation activities or operations, the applicant shall provide a rehabilitation plan with the use of maps, imagery, and renderings (at a scale of one inch equals two hundred feet) extending five hundred feet beyond the legal description of the site area with a maximum contour interval of five feet which includes at least the following:

1. A grading plan designed by a licensed engineer, surveyor or landscape architect, indicating the areas to be excavated, existing and design contours, and proposed final grades and elevations. To help

control storm water run off and erosion, to increase potential for vegetation growth, to improve slope stability and lateral support due to potential seismic activity (recognizing that fault lines exist on or near the properties), and to generally improve safety for future residential structures above and at the base of excavations, finished slopes shall not exceed 2.0 feet horizontal to 1.0 foot vertical drop from top to bottom.

2. A description of the methods and plans to be employed for simultaneous rehabilitation of the site during and after the mining operations;

3. A description of the landscape plan to include the installation of top soil, planting schedule, specifications for plant applications, mulching, and type of irrigation to be used;

4. A description of the hydrologic environment of the rehabilitated site to include a map illustrating water drainage areas such as lakes, springs, ponds, streams, well, pipe lines, culverts, ditches, and canals;

5. A description of all permanent roads and other man-made structures which are to remain after rehabilitation;

6. Cross sections shall be taken in the excavation site in areas of greatest material displacement. The number of cross sections required shall be dependent on the size and topography of the excavation site;

7. Artist's rendition of the site as it is expected to appear after rehabilitation;

8. To the extent not already shown, compliance with 8.24.040; and

9. Evidence of surety.

E. Addendum. (To be completed prior to final issuance of the excavation permit.) Final conditions or limitations imposed by the City Council.

F. Authorization of Permit. All operation and rehabilitation maps, and plans shall include signature blocks for the owner, city engineer, and mayor. Upon obtaining signatures of the above individuals, an excavation permit shall be authorized. (Ord 98-10, dated 11/10/98 and Ord. 98-9, dated 10/27/98)

G. Pre-application Meeting. The owner or an authorized representative shall meet with a Development Review Committee (DRC) consisting of city staff, planning and engineering consultants and any other party designated by the mayor to review the proposed pre-application plans for the excavation site. The pre-application plans shall be submitted in five copies and will consist of the information requested in 8.24.040 and B above, plus the following:

1. A sketch of the existing site contours, drainage and unusual geologic conditions;

2. Anticipated amount of material to be removed;

3. Number, type and kinds of machinery and equipment to be employed;

4. Water to be used in the operation, source and disposal; and sketch of the site contours after excavation is complete to include location of natural drainage channels, vegetation and roadways.

H. Within 30 days of receipt, the DRC will make a determination if the preapplication is complete. If the DRC and owner reach an impasse over whether the application is complete, the application will be forwarded to the Planning Commission for consideration.

I. Review of Final Application.

1. If the pre-application is determined to be complete by the DRC, the operator or owner shall then provide a final application to the City, and include in the final application any additional information recommended by the DRC, along with maps, drawings, plans and other information required by 8.24.040 in five copies. Within fourteen days following receipt of the final application, the Planning Commission shall distribute copies of the final application and accompanying plans and statements to other interested county, city, and state agencies as determined by the Planning Commission and shall ask for comments and recommendations. Thereafter, the Planning Commission shall make a recommendation on the application to the City Council.

2. Within a period of not more than 30 days of receipt of a recommendation on the final application from the Planning Commission, the City Council shall call for a public hearing through proper notice as prescribed by law to consider said final application. Following the public hearing, the City Council shall consider the application and shall approve, approve with conditions, or deny the request for an excavation permit.

3. Any person adversely affected by any final decision made regarding the issuance of an excavation permit under the provisions of this ordinance may file a petition for review of the final decision with the state district court within thirty days after the final decision is rendered.

**8.24.050 Revocation or Modification of an Excavation Permit.** Any excavation permit issued shall be subject to revocation or modification by the City Council, for cause, and in the following manner:

A. Notice of Failure to Comply. A notice shall be served on the owner or the permittee by the city engineer or his representative specifying the failure to comply with the requirements set forth in the excavation permit, or any city ordinance, requiring the owner or operator to appear before the City Council at a

designated date and hour to show cause why said permit should not be revoked or modified.

B. Hearing. Upon the date set for hearing, the City Council shall hear all charges and other testimony relating to the matter under consideration. The City Council shall then decide to either continue, revoke, modify, or refer to the city attorney for further action as described in 8.24.115.

C. Modification of the Excavation Permit Plans. Modification of the excavation permit plans may be initiated either by the Planning Commission or by the permittee where minor revisions are sought on the approved grading plan, schedule of proposed operation, or proposed rehabilitation plan. Consideration of such revisions need not require a public hearing provided that in the judgement of the Planning Commission the proposed revisions would not constitute significant changes, and provided also, that the permittee has not expressly requested that a public hearing be held. (Ord. 98-9, dated 10/27/98)

**8.24.060 Transfer to Successor Operator.** Whenever an operator succeeds to the interest of another operator by sale, assignment, lease or other means, the City Council may release the first operator from his responsibilities under his approved plans as described above, including surety, provided the successor assumes all of the responsibilities of the former operator to the satisfaction of the City Council under the approved operations and rehabilitation plans and the posting of surety. Upon satisfactory assumption of such responsibilities by the successor operator, under conditions approved by the City Council, the responsibility of the total excavation site shall be transferred to the successor operator. (Ord. 98-9, dated 10/27/98)

**8.24.070 Filing of an Annual Progress Report.** At the end of each calendar year, unless waived by the City Council for due cause, the City Engineer will make an onsite visit and review the excavation operation and will report his or her findings to the City Council. The report will summarize compliance with the excavation permit requirements and with the excavation ordinance. (Ord. 98-9, dated 10/27/98)

**8.24.080 Operational Requirements.** All excavation operations conducted or carried on are subject to the following limitations, restrictions, and controls:

A. Dust, Noise, Vibration, Smoke, Lights and Odor. All equipment and machinery operation on the site and in the transportation of products through the city shall be conducted in such a manner as to minimize the impact of dust, noise, vibration, smoke, welding lights and odor on the city. Soil berming, landscaping and other techniques should be used to accomplish the objective of reducing the impact of noise and vibration on adjacent property. All state and federal emission guidelines and regulations must be adhered to, including compliance with any permit issued by the State Division of Air Quality. Access



and haulage roads shall be maintained in a dust-free condition by surfacing or other treatment as approved by the city engineer.

B. Operation Boundaries. To protect neighboring residents and properties from the potentially adverse effects of dust, noise, vibration, smoke, welding and other lights, odors, and soil erosion; and to provide for the future development of the property; extractive operations are prohibited within 30 feet of the outside boundary of the permitted property, except in the case where gravel excavation operations or extractive activities are being conducted on the adjoining property and under those circumstances, by agreement of the adjoining property owners, extractive operations may be conducted up to the property line.

Rock crushing operations shall not be conducted within 1,000 feet of the outside boundary of the permitted property, except such rock crushing operations may be conducted within 500 feet of the outside boundary of the permitted property if specifically approved as part of the excavation permit, with appropriate conditions consisting of a combination of buffering, berming, screening, landscaping, and other mechanisms to reduce or mitigate potential adverse impacts on neighboring land owners and the City.

C. Fencing and Barriers. Fencing or other suitable barriers shall be created and maintained on the excavation site or on portions of the site where such fencing is necessary because of dangerous conditions as determined by the city engineer. Fencing or barriers may also be required, at the option of the City Council, to provide screening from normal view and enhance general aesthetics of the area. Fencing, monuments or other means of identification shall be placed and maintained around the perimeter of the excavation site so as to enable reasonable identification of the property line separating the excavation property from adjoining land owners.

D. Landscaping. The planting of trees, shrubs, or other appropriate landscaping, or the placement of berms or structures shall be required where natural conditions make such feasible and practical in order to provide a dust or sound barrier, to screen excavation from normal view, to enhance the general appearance, and to minimize the damaging effect of such operations to the beauty and character of the surrounding area. A landscape plan, signed and stamped by a registered landscape architect must be submitted for review and approval. Vegetative material shall be planted together with necessary topsoil as per the schedule approved in the granting of the excavation permit and shall be maintained in a healthy, growing condition.

E. Washing Operations. The washing of sand and gravel shall be done so as to prevent the discharge of waste water onto any public or private roads or any private property without the written consent of the property owner.

F. Run-off Water Detention. The operator or owner shall, on determination by the city engineer, be required to construct run-off water detention facilities to prevent storm water pollution, damage to neighboring property and structures, and for protection of residents below the site. All Federal, State and Local regulations governing storm water control and pollution prevention shall be adhered to, including the provisions of a Phase II National Pollution Discharge Elimination System ("NPDES") Storm Water Management Plan.

G. Mitigating Impacts on Public Roads and Highways. In order to mitigate the impact of gravel operations and related activities on public roads and highways, the conditions of an excavation permit may include a requirement to asphalt access roads for a prescribed distance before entering a public road or highway. In addition, all access roads used for gravel operations and related activities shall be periodically swept and cleaned as determined necessary for safety purposes.

H. Load Limits. All trucks, equipment and machinery operating on public or city streets shall comply strictly with the city, county, and state road limitations, such as Chapter 10.08 setting forth allowable vehicle weight limits, and all vehicles must meet state safety requirements.

I. Hours and Days of Operation.

1. Aggregate Hauling. Transport of aggregate materials from the site shall be limited to the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and from 8:00 a.m. to 5:00 p.m. on Saturdays. No hauling shall be permitted on Sundays. No truck used in hauling operations will be allowed into the site before the specified time or permitted to leave the site loaded with material from the site after the specified time.

2. Use of Processing Equipment. Crushing, screening and other aggregate processing shall be limited to the hours of 6:00 a.m. to 7:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturdays. No processing shall be permitted on Sundays.

3. Maintenance and Repair. Hours of operation for maintenance and repair of vehicles and equipment on site shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Saturday, provided Noise Ordinance regulations are complied with.

4. No excavation operations, shall take place on Sunday or the following legal holidays: New Year's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day, and Christmas.

J. Restricted Manufacturing Operations. The manufacture of concrete building or landscape products, the production or manufacture of lime products,

the production of ready-mixed concrete, the production of asphalt and any similar production or manufacturing process which might be related to the excavation operation shall not be permitted.

K. Duration of Excavation Operation. The City recognizes that the life of an excavation operation may be extensive. The City further recognizes that there are impacts on adjoining property owners, the general public, public improvements such as roads, and other safety considerations. Inasmuch as it is the city's intent to permit excavation only as a means of contouring the land to make it more useful and valuable for future development, the owner or operator shall be allowed to extract material for a period of time determined practicable by the City Council, but not to exceed twenty years. A permit may be renewed by City Council following the initial term based upon compliance with the excavation ordinance. Conditions may be added to a subsequent permit to mitigate those impacts. Any renewal permit will not be longer than ten years.

L. Cessation of Operations. Within one year after the cessation of operations, all temporary structures (except fences), equipment, rock piles, rubble, or other debris shall be removed or back-filled into the excavation so as to leave the site in neat and orderly condition as determined by the city engineer and as provided below. This includes the rehabilitation of the last area to be excavated.

M. Blasting. Any blasting or related explosive detonation proposed to be conducted as part of excavation operations must be approved by the City Council as part of an excavation permit, and any such activities, if approved, shall be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.

**8.24.090 Rehabilitation Requirements.** In order to ensure that the excavated area shall be rehabilitated to a condition of practical usefulness and reasonable physical attractiveness within a reasonable amount of time, to prevent environmental degradation to the ecological and hydrologic regimes caused by excavation, and to prevent present and future hazards to public safety and welfare, the owner or operator shall adhere to an approved rehabilitation plan as provided above and comply with the following:

A. Progressive Rehabilitation by Phase. The owner or operator shall submit a plan for progressive rehabilitation, meaning that rehabilitation will commence and be carried on during excavation operations. When an area is completed per the excavation plan, that area shall be rehabilitated. Rehabilitation shall proceed after completion of a phase, or site if there are no phases, as set forth in the approved excavation and rehabilitation plan.

B. Backfilling. Where backfilling is required, the excavated area shall be graded and backfilled with uncontaminated native materials or topsoil only. This backfill must be of such material as to support vegetation and grass growth. The graded or backfilled area shall not be contoured so that it will collect and permit stagnant water to remain thereon. Peaks and depressions in the excavation area shall be reduced to a surface which will result in level or gently sloping topography in substantial conformity to the land area immediately surrounding and which will minimize the possibility of erosion. Final backfill and cut slopes shall not be steeper than 2.0 feet horizontal to 1.0 foot vertical.

C. Grading, Stockpiling, Seeding, Phases, Etc. Excavations shall be planned so as to progressively develop the proposed final land forms by grading and by stockpiling overburdened materials in areas designated for future land forms or in excavations where the material will be spread over the excavation floor where no future excavation is anticipated. Such areas are to be seeded and planted immediately after grading is completed or within appropriate planting seasons, but in any case, the grading and planting shall be complete within one year. The rehabilitation plan shall contain a description of the phased rehabilitation process throughout the anticipated life of the excavation.

D. Final Rehabilitation of Entire Site. Final rehabilitation shall begin immediately for any site where operations authorized under an excavation permit have been completed. The final rehabilitation shall conform to the plan approved (including approved modifications) in the excavation permit. All rehabilitation plans shall conform at least to the below listed minimum standards and requirements listed elsewhere in this chapter; provided however, that the City Council may require more stringent standards where special hazards exist in order to protect the health, safety, or general welfare of the public, and to prevent injury to property or improvements:

1. Grading. Slopes, overburdened stockpiles, and abandoned soil piles shall be graded and smoothed so as to control erosion and prevent the creation of potentially dangerous areas in accordance with the direction of the city engineer.

2. Water-filled Areas. All excavations which create standing water or ponds shall be filled with native materials. This requirement shall not apply, however, to any water filled excavations scheduled to become an integral part of the final rehabilitation plan. The rehabilitation of these areas shall be done in such a manner that the groundwater is not polluted. Fill material shall be porous to allow for water dispersion unless otherwise specified in the rehabilitation plan.

3. Landscaping. Unless inconsistent with the final proposed use of the rehabilitated land, the excavated areas and all other disturbed areas shall be replanted and maintained with trees, shrubs, grasses, or other

vegetative ground cover, preferably native to the area, in order to minimize erosion and to restore the land to a natural appearance, or to an appearance previously approved by the City Council.

4. **Removal of Buildings and Equipment.** As soon as excavation has been permanently terminated, all buildings and equipment (including electrical conduits) used in the administration of the operations, shall be removed unless deemed necessary to the approved final use of the rehabilitated site.

E. **Rehabilitation Verification.** After excavation operations have been completed and rehabilitation of the excavation site has been completed according to the approved rehabilitation plan, the city engineer shall present to the City Council a statement verifying that the permit area has been rehabilitated in compliance with the requirements of the excavation ordinance and excavation and rehabilitation plan previously submitted in compliance with this ordinance. (Ord 98-9, dated 10/27/98; prior codes Ord. dated 1/9/75 (part) and § 19-5-1)

#### **8.24.100 Provision of Surety.**

A. **Provision of Surety before Operations Begin.** After receiving notification that the application for an excavation permit has been approved, but prior to commencement of such operation, the operator shall provide surety to the city, in a form and amount to be fixed by the City Council as recommended by the city engineer sufficient to secure the performance of the rehabilitation agreement.

B. **Amount of Surety.** In determining the amount of surety to be provided, the city engineer shall consider factual information as to the magnitude, type and costs of approved rehabilitation activities planned for the land affected and the nature, extent and duration of operations under the excavation and rehabilitation plan. The city engineer shall determine the amount of the bond reasonably related thereto, to protect the city and ensure compliance with the requirements with the excavation permit; however, the amount of bond shall not exceed one hundred percent of the estimated cost of rehabilitating the excavation. The bond shall be periodically reviewed to ensure that the amount of the bond is capable of insuring adequate rehabilitation and shall be adjusted accordingly.

C. **Form of Surety.** In determining the form of surety to be provided, the City Council shall approve a method acceptable to the owner or operator that is consistent with the requirements of this ordinance, which may be one or a combination of corporate surety bond, land, cash, or other deposited securities.

D. **Release of Surety.** The liability under surety provisions shall continue until such time as released as to part, or in its entirety, by the City Council.

E. Forfeiture of Surety. If the operator fails to or refuses to carry out the necessary land rehabilitation as outlined in the approved excavation and rehabilitation plans, the city may, after notice and hearing, declare any surety filed for this purpose forfeited, or in case of a corporate bond file suit against the owner or operator and his bonding company. The city shall also have the right to file suit against the defaulting permittee for violations of this ordinance or any permit granted hereunder, or for costs of rehabilitation and reasonable attorney fees. (Ord. 98-9, dated 10/27/98; prior codes Ord. dated 1/9/75 (part) and § 19-5-2)

**8.24.110 Emergencies, Short Term Contractual Obligations and Extended Operations.** The City may modify the provisions relative to the nature and scope of excavation activities, hours of operations and days of operations consistent with the intent of these regulations to address the following circumstances subject to review and approval based on the criteria set forth below.

A. Bona Fide Emergencies. The Operator of any excavation operations may obtain approval from the City Administrator or his designee for any temporary change to the conditions of an excavation permit relating to hours of operation, days of operation and hauling routes in order to respond to bona fide emergencies of emergent circumstances. Each such request shall be promptly reviewed and may be approved subject to the imposition of reasonable conditions to reduce or mitigate potential adverse impacts on neighboring landowners and the City such as dust control, noise reduction and traffic control requirements. Any emergency beyond 30 days must be reviewed by the City Council.

B. Short Term Contractual Obligations. The Operator of any excavation operations may obtain the approval of the City pursuant to a conditional use permit application following the normal process provided by City ordinance for any temporary change to the conditions of an excavation permit relating to hours of operation, days of operation and hauling routes for "Contractual Obligations", which are defined for these purposes as obligations arising under a contract where a governmental agency or bona fide third party contracting with a governmental entity or public agency requires, as a condition to entering into such a contract, that the Operator deliver or otherwise provide aggregate products (including hauling and processing) on days and hours of operation not normally otherwise allowed under the provisions of this ordinance.

C. Temporary and Permanent Extended Operations. The Operator of any excavation operations may obtain the approval of the City pursuant to a conditional use permit application following the normal process provided by City ordinance for occasional temporary extended operations or permanent extended

operations relating to hours of operation and days of operation subject to review and approval based on the following criteria and the imposition of reasonable conditions to reduce or mitigate the potential adverse impacts on neighboring landowners and the City.

1. Adequately addressing public safety concerns and other potential adverse impacts of any such proposed extended operations.

2. Adequately addressing public safety concerns specifically relating to the impact of heavy truck travel traveling to and from such excavation operations by various means including, but not limited to, demonstrating the availability of an alternative access that does not travel through existing residential neighborhoods or by providing an alternative access for such heavy truck travel in order to address significant public safety concerns arising out of the impact of such heavy truck travel on 500 West and other current or potential north/south streets in the City.

3. Providing amenities and/or unique public benefits to address and mitigate potential adverse impacts of any such proposed extended operations.

4. Assuring that any such proposed extended operations are a minimum of at least one-half (½) mile from existing residential development; or are part of a large scale, long-term mixed use project that demonstrates it can provide its own internal compatibility through a combination of buffering, berming, screening, landscaping and other mechanisms to reduce or mitigate adverse impacts on neighboring landowners and the City.

**8.24.120 Compliance by Existing Operations.** Within ninety days after adoption of the Ordinance codified in this chapter, all existing excavation operations shall comply with the provisions set forth in the operational requirements of Section 8.24.030, and within one year after the adoptions of this ordinance existing excavation operations shall comply with all provisions set forth herein. (Ord. 98-10, dated 11/10/98 and Ord. 98-9, dated 10/27/98; prior codes Ord. dated 1/9/75 (part) and § 19-7-1)

**8.24.130 City Engineer-Enforcement.** The city engineer, appointed by the City Council, is designated and authorized as the officer charged with the enforcement of this chapter. (Ord. 98-9, dated 10/27/98; prior codes Ord. dated 1/9/75 (part) and § 19-3-1)

**8.24.140 City Engineer-Duties.** It shall be the duty of the city engineer or his designee to inspect or cause to be inspected all excavations. Where it is determined by the city engineer that excavation is proceeding not in compliance with the provisions of

this chapter, he shall enforce the provisions of this chapter, and in performance of his duty may enter actions in the courts where necessary, and his failure to do so shall not legalize any violation of such provision. (Ord. 98-9, dated 10/27/98: prior codes Ord. date 1/9/75 (part) and § 19-3-2)

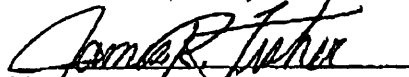
**8.24.150 Violation.** Any person, owner or operator violating any provision or provisions of this chapter shall be deemed guilty of a class C misdemeanor and each such person, owner or operator shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted, and upon conviction of any such violation such person, owner, or operator shall be punishable to the fullest extent of the law. Further, the city may revoke the license of any person or corporation violating any of this chapter after a hearing upon due notice, which hearing shall be open to the public. (Ord. 98-9, dated 10/27/98: prior codes Ord. date 1/9/75 (part) and § 19-3-3)

**8.24.160 Repealer.** In the event any part of the ordinance is determined to be invalid or unconstitutional, the portion is deemed stricken from the ordinance, but the remaining provisions shall remain valid. (Ord. 98-9, dated 10/27/98: prior code Ord. 96-10 dated 5/28/96)

**Section Two:** This ordinance shall take effect immediately upon posting.

**DATED** this 13<sup>th</sup> day of December, 2005.

Pleasant View City, Utah

  
Mayor

Attest:

  
City Recorder

